

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

JANICE COOK, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	Cause No. 4:10-cv-00179-JTM
)	
ACS STATE & LOCAL SOLUTIONS, INC.,)	
et al.)	
)	
Defendants.)	

AMENDED¹
MOTION TO DISMISS PURSUANT TO FED. R. CIV. P. 12(b)(1) and 12(b)(6)
OF DEFENDANT ST. LOUIS POST-DISPATCH, LLC

Defendant St. Louis Post-Dispatch, LLC ("Post-Dispatch"), pursuant to Fed.R.Civ.P. 12(b)(1) and 12(b)(6), moves to dismiss plaintiffs' Amended Complaint against it on the grounds that:

A. Fed.R.Civ.P. 12(b)(1): This Court lacks subject matter jurisdiction of this action, because plaintiffs have failed to allege any facts showing that they have standing to pursue this action, in that plaintiffs have alleged no facts supporting any claim that the Post-Dispatch knowingly obtained, used or disclosed their personal information from motor vehicle records or that they suffered any injury in fact therefrom; and

¹ Due to a clerical error, the Post-Dispatch inadvertently filed an earlier draft of its Motion to Dismiss on July 23, 2010. That draft did not include reference to a recent Fifth Circuit Court of Appeals Opinion affirming the holding of the United States District Court. *See Taylor v. Axiom Corp.*, Civil Action No 2:07 cv 0001 (Lead); Unpublished Opinion at 9 (E.D. Texas, September 9, 2008) (Available on PACER -- Document 105), *aff'd* Case No. 08-41083 (5th Cir., July 14, 2010) (Available on PACER -- Document 00511173310). This Motion to Dismiss takes the place of that inadvertently-filed Motion to Dismiss (Document 35).

B. Fed.R.Civ.P. 12(b)(6): Plaintiffs' fail to state a claim upon which relief may be granted because they have failed to allege any facts showing that the Post-Dispatch knowingly obtained, disclosed or used their personal information from a motor vehicle record for a purpose not permitted under the DPPA.

In support of this motion, the Post-Dispatch incorporates the Suggestions submitted in support of the motion to dismiss of defendant ISO Claims Services, Inc., d/b/a Insurance Information Exchange.

As further support for this motion, the Post-Dispatch refers this Court to the holding in *Taylor v. Acxiom Corp.*, Case No. 08-41083 (5th Cir., July 14, 2010) (Available on PACER -- Document 00511173310). *Taylor* holds that bulk obtainment of motor vehicle and driver's records for a future use or disclosure that is permitted under the Driver's Privacy Protection Act ("DPPA") does not violate the provisions of the DPPA. It further holds that a Complaint which fails to include factual allegations that a defendant obtained motor vehicle records in bulk for a purpose not permitted under the DPPA or that it used or disclosed personal information therefrom in a manner not permitted under the DPPA fails to state a claim upon which relief may be granted.

WHEREFORE, defendant St. Louis Post-Dispatch, LLC moves that this Court dismiss this action with prejudice at plaintiffs' cost and expense, and for such other and further relief as this Court deems proper in the premises, including an award of its attorneys' fees if deemed appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 26th day of July, 2010, a true copy hereof was served upon the following counsel of record, via e-mail, and that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

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